

Remarks

Claims 1-5, 7-20, 22-35, and 37-45 are pending and rejected. Applicant respectfully requests allowance of claims 1-5, 7-20, and 22-35, and 37-45.

Claims 1-11, 13-14, 16-26, 28-29, 31-41, and 44 stand rejected under 35 U.S.C. §103(a) over the Gross reference (Gross) in view of U.S. Patent 6,175,871 (Schuster). Applicant points out that the claims do not merely claim buffering video for a few seconds before playback. Instead, the claims require a specific buffering technique based on display rates and network transfer rates. The use of these metrics is not taught by Gross or Schuster, and in fact, ***both Gross and Schuster clearly teach away from the use of the claimed metrics, which makes the rejection improper.***

The final Office Action cites Gross on page 65 as teaching the claimed buffering technique. This section of Gross allows the user to select the “seconds” of buffering before video is displayed. User selection clearly teaches away from the claimed technique based on video display rate and network transfer rate.

The final Office Action asserts that Gross suggests buffering “hours” of video. One skilled in the art would not agree with this distortion. Gross allows the user to select an amount of “seconds” of video to buffer (see Gross p. 65). Buffering “seconds” of video clearly teaches away from buffering hours of video. It appears absurd to require a user to determine how many seconds are in three hours of video (10,800).

The final Office Action asserts that Gross suggests storing the entire clip even if the clip is hours long. One skilled in the art would not agree with this distortion. Gross states that the default setting is storing the entire clip “up to available memory.” For a video clip of a few seconds, the entire clip could be buffered, but the amount of video to be buffered is limited by a buffer that is clearly designed to hold seconds of video.

The final Office Action asserts that Gross suggests the claimed buffering technique because it discloses the result of a better quality video experience on slower connections. Like the claimed invention, the prior art buffering technique in Gross also provides a better quality video experience on slower connections. There are numerous techniques to provide a better quality video experience on slower connections. These techniques are not all the same.

Gross discloses buffering “seconds” of video before playback, so variations in video arrival can be smoothed out to provide a quality video experience – even on slower connections. The amount of buffering is specified by the size of the memory (default), although the user may override the default setting by selecting the “seconds” of video to buffer. Nowhere does Gross even suggest the use of the claimed metrics to control buffering. To one skilled in the art, Gross teaches away from the claimed metrics.

Schuster teaches a video buffer that is sized based on packet loss. (See Schuster, column 11, lines 39-64). In Schuster, the buffer size is measured in milliseconds (See Schuster column 10, lines 45-46). The use of a millisecond buffer that is sized based on packet loss clearly teaches away from the claimed technique.

Neither Gross nor Schuster disclose using *network transfer rate and video display rate to control buffering as claimed*. Gross and Schuster clearly teach away from this claimed technique by using very small buffers, user selection, and packet loss. It is apparent from comments in the final Office Action that hindsight reasoning was used to distort the teachings of Gross and Schuster to arrive at the invention. The rejection is improper and should be withdrawn.

Claims 12, 15, 27, 30, 42, and 45 stand rejected under 35 U.S.C. §103(a) over the Gross reference (Gross) in view of U.S. Patent 6,175,871 (Schuster) and U.S. Patent 6,157,377. Claims 12, 15, 27, 30, 42, and 45 are dependent on independent claims 1, 16, and 31 and are patentable for the reasons given above.

Applicants submit that there are numerous additional reasons in support of patentability, but that such reasons are moot in light of the above remarks and are omitted in the interests of brevity. Applicant respectfully requests allowance of claims 1-5, 7-20, and 22-35, and 37-45.

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